

§ 4.203

(6) Prior probate orders conflict on an issue relevant to the case;

(7) The jurisdiction of any court that issued an order that has been used as a supporting document in the case is challenged;

(8) Questions exist concerning the decedent's domicile;

(9) There are other problems with the case requiring an evidentiary hearing;

(10) The case requires a determination as to a nonexistent person or other allotment irregularity under § 4.203;

(11) The case involves a presumption of death under § 4.204;

(12) The case requires a determination of escheat under § 4.205;

(13) The case requires a determination of nationality, citizenship, or status affecting the character of land titles under § 4.206(a)(2);

(14) The interested parties reach a settlement agreement under § 4.207; or

(15) The case involves a tribal purchase of a decedent's interest under § 4.300 *et seq.*

(c) For probate cases within their respective jurisdictions, deciding officials will:

(1) Determine the heirs of any Indian who dies intestate possessed of trust property;

(2) Approve or disapprove the will of a deceased Indian disposing of trust property;

(3) Accept or reject any full or partial renunciation of interest in both testate and intestate proceedings;

(4) Allow or disallow creditors' claims against the estate of a deceased Indian; and

(5) Decree the distribution of trust property to heirs and beneficiaries.

(d) "Distribution" under paragraph (c)(5) of this section includes partial distribution to known heirs or beneficiaries where one or more potential heirs or beneficiaries are missing but not presumed dead. In these cases, the deciding official will first attribute to and set aside for the missing person or persons the share or shares that the missing person or persons would be entitled to if living.

(e) In any case in which de novo review is sought following a decision by an attorney decision maker under § 4.215, an administrative law judge or

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Indian probate judge will review the case de novo, hold hearings as necessary or appropriate, and issue a decision.

§ 4.203 Determination as to non-existent persons and other irregularities of allotments.

(a) An administrative law judge or Indian probate judge will hear and determine:

(1) Whether trust patents covering allotments of land were issued to non-existent persons; and

(2) Whether more than one trust patent covering allotments of land had been issued to the same person under different names and numbers or through other errors in identification.

(b) The administrative law judge or Indian probate judge will proceed as provided in § 4.202(c) if he or she determines under paragraph (a) of this section that:

(1) A trust patent was issued to an existing person, or separate persons received the allotments under consideration; and

(2) Any such person is deceased without having had his or her estate probated.

(c) The administrative law judge or Indian probate judge will issue a decision setting forth his or her determination, and will provide notice thereof to interested parties under § 4.240(b), if he or she determines under paragraph (a) of this section that either:

(1) A person did not exist; or

(2) More than one allotment was issued to the same person.

§ 4.204 Presumption of death.

(a) An administrative law judge or Indian probate judge will receive evidence on and determine the issue of whether any person, by reason of unexplained absence, is to be presumed dead.

(b) If an administrative law judge or Indian probate judge determines that an Indian person possessed of trust property is to be presumed dead, the administrative law judge or Indian probate judge will proceed as provided in § 4.202(c).